THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.25273 of 1999

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ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The writ petitioners seek a writ of *mandamus* to declare the order dated 27-09-1999 in L.G.A.No.21 of 1998 passed by the first respondent, Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad, as not applicable to the petitioners' small scale industrial units covered by municipal Nos.9-26/1/1, 10-11-86/1/B, 10-11-1386/D-II, 11-186/1B, 11-186/1/D of Balanagar Village, Ranga Reddy District.

The third respondent herein originally filed O.P.No.522 of 1998 on the file of the Special Tribunal, Ranga Reddy District, against respondents 4 to 10 herein and respondents 1 to 7 therein for declaration of his title over the petition schedule property and for recovery of the same after declaring respondents 1 to 7 therein as land grabbers. That application was allowed by means of an order dated 26-06-1998 declaring the respondents as land grabbers and directed them to deliver vacant possession of the petition schedule land to the petitioner within one month. The claim of the petitioner for compensation, however, was negatived. The contesting respondents 1, 2, 5 to 7 having been aggrieved by the said order filed L.G.A.No.37 of 1993 before the Special Court. Assailing that part of the order whereunder the claim for compensation was negatived, the petitioner in L.G.C. also filed L.G.A.No.43 of 1993 before the Special Court. Both the appeals were heard together and by means of a common order dated 29-04-1994 the learned Special Court while setting aside the

order passed by the Tribunal remitted the matter back for fresh disposal giving liberty to the parties to adduce evidence. After remand, further evidence was adduced on either side and at the culmination of the enquiry the learned Tribunal again allowed the petition declaring respondents 1 to 7 therein as the grabbers and directed them to deliver vacant possession of the land to the petitioner within one month from the date of the order. However, the claim for compensation was negatived once again. Assailing the said judgment, respondents 1, 2, 5 to 7 filed L.G.A.No.21 of 1998 and the petitioner therein filed cross-objections. Under the impugned judgment dated 27-09-1999 the learned Special Court dismissed the appeal and the cross-objections as well.

The writ petitioners, who are not parties to the land grabbing case, are now seeking to assail the impugned order after having obtained leave of this Court.

It is the case of the writ petitioners that they have been in peaceful possession and occupation of the plot in an area of 1945 square yards by the first petitioner, 1322 square yards by the second and third petitioners, 1500 square yards by the fourth petitioner and 800 square yards by the fifth petitioner. The land covering the said plots is a part of the nala abutting the Sy.No.121 and to some extent of Sy.No.121 of Balanagar village. The petitioners claim to have been in possession of the same for the last more than fifty years. According to them, the land was originally a waste land with full of deep pits and was a low-lying area as it was a part of nala. From the year 1964-1965 onwards, the abutting area in Sy.Nos.122 and 123 was developed by the State Government and allotted the same to the second respondent Co-operative Industrial Estate. In view of the development of that land covered by Sy.Nos.122 and 123, petitioners also developed the area in their occupation by filling the deep pits and constructed the sheds for running small scale units under the municipal Nos. 9-26/1/1, 10-11-86/1/B, 10-11-1386/D-II, 11-186/1B, 11-186/1/D of Kukatpally

Municipality. Several employees are working in the petitioners' units and they invested considerable amount.

Respondent No.3 who was allotted plot No.A-16 by the Government on lease for establishment of industrial units, created sub-lease in the said plots for gaining the benefits. He was not paying the rents to the respondent No.2, society. An Enquiry Officer was appointed by the State, who, according to the petitioner, observed that respondent No.3 had leased out the plots to the third parties, so as to defeat the object of development of small scale industrial units. In the meanwhile, respondent No.3 in collusion with the persons, who are managing the respondent No.2, society, obtained another plot of land to an extent of 3000 square yards in plot No.A-19 and under the guise of the said plot, respondent No.3 is claiming more area, which plot, in fact, was not in existence. It was meant to knock away the valuable property under the possession of the writ petitioners. Under that background, respondent No.3 initiated land grabbing proceedings impleading respondents 4 to 10 alone without impleading the petitioners, who are in actual possession and running the small scale industrial units and wanted to grab the lands of the petitioners in collusion with respondent Nos.2 and 4 to 10. Hence, the petition.

The writ petition was resisted on the premise that the petitioners approached the Court with unclean hands suppressing the material facts. According to respondent No.3, the petitioners filed I.A.No.300 of 1994 in L.G.A.No.37 of 1993 on the file of the Special Court seeking to come on record. Thus, the petitioners were aware of the pendency of the land grabbing case since 1998. In fact, the petitioners were the purchasers of the property during the pendency of the land grabbing proceedings and therefore they have no *locus standi* to file the present writ petition.

The case appears to have a chequered career. Certain facts need be mentioned for better appreciation of the rival contentions. The land grabbing case was filed initially by the third respondent herein

against seven persons, respondents 4 to 10 herein. The case of the applicant was that the State acquired lands in Balanagar and Fathenagar villages and allotted an extent of Acs.47.00 covered by Sy.Nos.121, 122 and 123 to the second respondent-cooperative industrial estate, a society registered under the Societies Registration Act. The said society, after taking possession of the land, divided it into plots and allotted the plots to its members. One such plot bearing No.A-19 was allotted to the applicant in the year 1978 and possession was handed over to him. Originally, the area that was allotted to the applicant was mentioned as 3000 square yards. Subsequently, on measurement, it was found to be an extent of 8877 square yards and in sequel thereto, the applicant was advised to pay the lay out fees to the HUDA. Thus, the applicant claims that he was the owner and on 09-11-1987 respondents 1 to 7 grabbed the plot allotted to him. He brought the act of land grabbing to the notice of the Commissioner, Kukatpally Municipality and M.R.O., Balanagar. Since they failed to take any action, he filed the application before the Tribunal. That application was resisted by the respondents 1, 2, 5 to 7 by filing a common counter and the other respondents remained ex parte. Their case seems to be that they were in possession of Acs.1.29 guntas of land, covered by Sy.No.121/AA of Balanagar village, since the time of their forefathers as protected tenants and constructed the residential huts, raised compound wall and living therein. T h e Kukatpally Municipality gave house numbers to those structures and collecting taxes. The respondents denied the acquisition of the land by the Sate and allotment of the same by the society to the applicant. It was their further case that when the applicant attempted to occupy the land, they resisted and ultimately filed the suit, O.S.No.440 of 1987, on the file of the Principal Subordinate Judge, Ranga Reddy District, seeking perpetual injunction and obtained interim injunction in I.A.No.850 of 1987. Plot No.A-19 is covered by Sy.No.123 of Balanagar village and the respondents were not concerned with the land in Sy.No.123 of

Balanagar village, since they had been in possession of the land covered by Sy.No.121/AA of the village as protected tenants.

During the course of enquiry before the Tribunal both parties adduced their evidence. An Advocate-Commissioner was appointed by the Tribunal to make a local inspection of the plot. The Advocate Commissioner filed his report, which was made part of the record. Appreciating the evidence adduced on either side, more particularly, the report of the Advocate Commissioner, who categorically stated *inter alia* in his report that plot bearing No.A-19 was part of the industrial estate and part of the land allotted by the State to the eighth respondent, which in turn allotted to the applicant, eventually allowed the petition, as aforesaid. Having been aggrieved by the said order, respondents 1 to 7 filed an appeal before the Special Court, which, as aforesaid, allowed the appeal and remitted the matter to the Tribunal for fresh disposal. After remand, the applicant was further examined and Exs.A17 to A21, Exs.B14, B17, B40 and B41 were marked. R.W.3 was recalled on the side of the respondents and Exs.B29 to B36, B38, B39 and B42 were marked. R.W.1 was examined again, whose evidence was eschewed earlier from consideration as R.W.5 and Exs.B18 to B26 were marked. On behalf of the society, R.W.6 was examined and Exs.B27 and B28 were marked. Appreciating the evidence thus adduced, the Tribunal was again of the view that the respondents 1 to 7 therein were grabbers. In the appeal filed before the Special Court for the second time, the Special Court appointed Assistant Director, Survey and Land Records, Ranga Reddy District as a Commissioner for the purpose of fixing the boundaries for the land allotted to the Cooperative Industrial Estate, Balanagar, Hyderabad, pursuant to the land acquisition proceedings and to localize the plot bearing No.A19 allotted to the applicant. The Assistant Director, executed warrant and filed a report, dated 15-09-1999 annexing therewith a sketch. The respondents 1, 2, and 5 to 7 filed their objections to the Commissioner's report. In the report *inter alia* the

Commissioner stated that the petition schedule mentioned property which was identified by both the parties was in the land handed over by the State to the eighth respondent society. Having regard to the report of the Advocate Commissioner filed earlier before the Tribunal and having regard to the report of the Assistant Director, Survey and Land Records, Ranga Reddy District, submitted before the Special Court, the learned Special Court eventually reached the conclusion that the applicant was allotted the land by the society and that the respondents 1 to 7 were the land grabbers. Respondents 1 to 7 did not file any Writ Petition assailing the impugned judgment of the learned Special Court and allowed it to become final. The writ petitioners after having obtained the necessary leave, as aforesaid, of this Court, filed the instant writ petition.

Sri K.Ramakrishna Reddy, learned Senior Counsel appearing for the writ petitioners, seeks to contend that Rule 6 of the Rules framed under the Land Grabbing (Prohibition) Act is mandatory and has not been complied with in the instant case and therefore the entire proceedings are vitiated.

Sri K.K.Waghray, learned counsel for the respondents, on the other hand, seeks to contend that the writ petitioners, who are the purchasers from the land grabbers during the pendency of the proceedings, have no *locus standi* to file the instant writ petition and the learned counsel seeks to sustain the findings of the Tribunal and the Special Court as well.

The learned senior counsel for the writ petitioners seeks to refute the allegation that the petitioners are the purchasers from the land grabbers on the premise that there has been no evidence to show and substantiate the same.

Having regard to the said contentions the controversy lies in a narraow compass and the short point for our determination is

“Whether Rule 6 has been complied with or not and what is the consequence of non-compliance thereof?”

Before adverting to the point formulated for determination, it may be reiterated here that the Special Tribunal was consistent that plot No.A-19 was allotted to the third respondent by the second respondent, society. It was held so initially by the Tribunal and even after the remand of the case to it by the Special Court, it reiterated the same view. On appeal, for the second time, the Special Court concurred with the said finding of the Tribunal. While concurring with the findings of the Tribunal, the Special Court considered afresh, apart from the evidence recorded earlier, the evidence of R.W.5, the Administrative officer of the society and the report of the Assistant Director, Survey and Land Records, Ranga Reddy District, along with the sketch and eventually reached the conclusion that the third respondent herein was allotted plot No.A-19 by the society. It may be further mentioned here that respondents 4 to 8 herein, who are the contesting respondents before the Tribunal, resisted the land grabbing case by filing their counter and by leading evidence in support of their contentions. They have taken the plea *inter alia* in the counter that since the time of their forefathers they have been in possession of the land in an extent of Acs.1.29 guntas covered by Sy.No.121/AA of Balanagar village as protected tenants thereof and that they have later constructed residential huts, raised compound wall and have been living therein by paying the necessary property taxes to the Kukatpally Municipality. They denied even the acquisition of the land by the State. Adverting to these rival contentions, the Tribunal as well as the Special Court, eventually reached the conclusion in favour of the third respondent herein. Therefore, no collusion whatsoever can legitimately be attributed to those respondents, who resisted the claim of the third respondent before the Special Tribunal. There has been no gainsaying now that the writ petitioners sought to implead themselves before the Special Court by filing I.A.No.300 of 1994 in L.G.A.No.37 of 1993. Having failed there, the petitioners filed the instant writ petition. They have not mentioned this fact in the affidavit

filed in support of the writ petition *inter alia.* While it was the case of the contesting respondents before the Special Tribunal that they have been in occupation of the land in dispute as protected tenants thereof, curiously it is the case of the writ petitioners that they have been in occupation of the land in dispute by establishing small scale units thereon for the last more than fifty years. Surprisingly, neither the Commissioner appointed by the Special Tribunal, nor the Assistant Director, Survey and Land Records, appointed by the Special Court in appeal, did find the presence of the writ petitioners on the land in dispute. Obviously, the Commissioner as well as the Assistant Director could localize the land in dispute while executing the warrant entrusted to them. In that view of the matter, the presence of the writ petitioners as stated by them on the land in dispute appears to be doubtful.

In the instant writ petition the petitioners seek to rely upon a letter, dated 27-05-1989, addressed to it by the Cooperative Industrial Estate Limited, the second respondent herein. No doubt, the letter reads that the first petitioner was in physical possession of the open land admeasuring 1945 square yards in Sy.No.121/A and the request of the first petitioner for permanent allotment of the land in his possession would be lodged for the present and its case would be considered along with others as and when the stay orders issued by the High Court were vacated. Presumably, the proceedings have been sought to be relied upon by the petitioners so as to show its physical possession way back in the year 1989. But, the document amply buttresses the case of the third respondent that he was allotted the land by the second respondent, society. What happened after 1989 has not been shown by the petitioners before the Court. The question that the petitioners are having their small scale units in industrial estate, Balanagar, or not is not very much germane for consideration. In fact, that is not the contentious issue. The contentious issue seems to be that they are not the allottees of the land

in dispute, which is covered by plot No.A-19. The fact that the second respondent, society, was allotted the land by the State and after such allotment, it divided the land into plots cannot be gainsaid. When that be the case, it is the case of the second respondent that it allotted plot No.A-19 to the third respondent has been amply proved by the examination of R.W.5. The voluminous documentary evidence sought to be relied upon by the petitioners showing the payment of taxes etc., in that view of the matter, will not help the case of the petitioners. In this background, now the point framed for determination has to be considered.

Rule 6 of A.P. Land Grabbing (Prohibition) Rules, postulates that every application filed before the Special Tribunal or the Special Court, as the case may be, alleging land grabbing, may be referred for local inspection or verification or both by the Mandal Revenue Officer, having jurisdiction over the area, so as to know the correctness of the statements made in the application qua the columns 1 to 15 and the facts relating to ownership, the actual possession and use of land concerned and such other particulars or information as is found to be useful to the Court to arrive at a correct decision.

Rule 6 has been held to be a mandatory requirement by this Court in *Shalivahana Builders Pvt. Ltd. v. Sri Ganapathy Cooperative Housing Society and others*[1] by a co-equal bench. The principal laid down therein has been affirmed by a full bench of this Court later in *Mohd. Siddiq Ali Khan and others v. Shahsun Finance Limited*[2]. In view of the two authoritative pronouncements of this Court, the legal position is obvious that Rule 6 is mandatory and non compliance thereof before taking cognizance vitiates the proceedings.

To avoid the mischief of this Rule, it is the contention of the learned counsel for the third respondent that the Mandal Revenue Officer was impleaded as a party to the proceedings, who submitted his parawise remarks and therefore the defect, if any, in not referring

the application initially to the Mandal Revenue Officer for verification is cured. It may be mentioned here that this ground of non-compliance of Rule 6 has not been taken initially *inter alia* in the writ petition. It is only at the time of arguments and when the records were sent for, on verification of the records, this plea has been sought to be taken by filing an additional affidavit. Whatever may be the background, there can be no gainsaying at this stage that Rule 6 is mandatory. It only remains to be seen the effect of such non-compliance in the instant writ petition.

Obviously, the writ petitioners are not parties to Land Grabbing Case. The contesting respondents in the land grabbing case before the Special Tribunal have not taken such a plea at any stage of the proceedings, although the case was contested by them. They allowed the matter to attain finality. The petitioners' grievance, as can be seen from their case, is that they have been in possession of the land in dispute. The land grabbing application has not been filed against them. The contesting respondents before the land grabbing tribunal, as aforesaid, have not taken such a stand during the course of enquiry. Therefore, we are of the considered view that it is not legitimate for the petitioners to raise such a plea at this stage. The question that falls for determination in the instant writ petition is, as to whether the petitioners are in possession of the land in dispute and if so the R.D.O. concerned can be allowed to proceed to execute the order of the Tribunal by evicting respondents therein or their representatives and by delivering vacant possession of the land in dispute to the third respondent herein. Therefore, the initial cognizance taken by the Tribunal on the application filed by the third respondent against the contesting respondents therein cannot now be contended to have been vitiated by the petitioners. Since they are not in any way aggrieved by the orders passed therein, inasmuch as their grievance seems to be that under the guise of the said order, they cannot be evicted.

It is now the contention of the learned counsel for the third respondent that the petitioners are the purchasers from the contesting respondents in the L.G.C. case. The contention is sought to be repelled by the learned senior counsel that there has been no proof on record to show that the petitioners are the purchasers. The grievance of the petitioners seems to be that they have been in possession since a long time and their possession cannot be disturbed by executing the order passed by the Tribunal against the contesting respondents in the land grabbing case. In that view of the matter, the petitioners have no *locus standi* to contend before this Court that non-compliance of Rule 6 vitiates the proceedings and eventually the order of the Special Tribunal and the order of the Special Court have become *non est*. Such a plea on the part of the petitioners, having regard to the above backdrop and the sequence of the events that transpired, cannot be permitted to be raised by the petitioners. If the petitioners are not really the purchasers from the contesting respondents in the land grabbing case before the Tribunal, they must trace their independent title to the land in dispute. Instead of endeavoring to show their title, the petitioners are very much relying upon the so-called legal flaw. They can succeed only when they are able to show their independent title to the property in dispute qua the third respondent whose title has been upheld by the Special Court. For the above reasons, we are of the considered view that it is now not open to the petitioners to raise the plea that there has been non-compliance of Rule 6 and consequently the entire proceedings before the Special Tribunal and the Special Court, as the came may be, are vitiated.

The learned counsel for the respondents seeks to place reliance upon a bench judgment of this Court in *Ibiza Industries Ltd. vs. Union of India*[3], wherein it was held as follows:

"A prerogative writ is not to be issued as a matter of course. The applicant must come in the manner prescribed and adopt a method which is otherwise in accordance with law and must be perfectly frank and open with the Court. There is an obligation on the part of the applicant in an application

under Article 226 to be candid and be otherwise fair to Court so as not to mislead the Court. The Doctrine of Uberrima Fides has its fullest application in a petition under Article 226. The Court is not to use a discretion in the event of there being any attempt on the part of the petitioner to mislead the Court.

Invocation of the power under Article 226 of the Constitution by the High Court is discretionary and the question invariably before the Court is whether, in fact, it should exercise its discretion in favour of the party or not? And it is on this context that the conduct of the party has a definite and an important bearing in the exercise of discretionary power and invoking the jurisdiction under Article 226 of the Constitution. The High Court would always refuse to exercise its discretion in favour of an applicant if he (the applicant) makes a statement which cannot be termed to be correct or suppressed facts or being desirous of gaining an undue and unfair advantage or misleads the Court in any way."

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In our considered view, the above dictum squarely applies to the present facts. The petitioners, who failed in their attempt to come on record before the Special Court, did not make any whisper about the same in the Writ Petition. They have not taken initially the plea of non-compliance of Rule 6. Obviously, the petitioners want to take advantage of the legal position so as to see that ultimately the result of the land grabbing case becomes *non est*. Such an attempt on the part of the petitioners cannot be countenanced by this Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India. For the above reasons, the Writ Petition must fail.

In the result, the Writ Petition fails and is dismissed. However, under the circumstances, no order as to costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

Dt. _____

skmr

TCSR,J & GC,J.

The learned senior counsel appearing for the writ petitioners at this stage represents that because of the existence of the Industrial Units on the application schedule mentioned lands, it is expedient in the interest of justice to direct *status quo* for a period of six months from this date so that alternative arrangements can be made.

The learned counsel appearing for the respondents, on the other hand, represents that a period of three months from this date would be sufficient.

Having due regard to the fact that the Industries are to be shifted, we are of the considered view that the request for granting of status quo for a period of six months is reasonable. We, therefore, direct the authorities to maintain status quo for a period of six months from the date hereof.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

Dt.30-04-2007
VGSR

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.25273 OF 1999

DATED 30—04—2007

M/s.Bharat Fabricators, Balanagar,
Hyderabad-37, rep. by its Prop.
M.Pushpal Reddi
S/o Narayana Reddi, 52 years.
And Others ... Petitioners

v.

The Special Court under A.P. Land Grabbing
(Prohibition) Act, Hyderabad,
Rep. by its Registrar.
And Others ... Respondents

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[1] 2003 (2) ALD 476

[2] 2005 (2) ALD 675

[3] 1998 (5) ALT 259